

Statement of Commissioner Jonathan S. Adelstein
Public Hearing on Early Termination Fees
Washington, DC
June 12, 2008

I would like to thank Chairman Martin for holding this hearing on early termination fees today. Hearings like this are the best way for us to learn and discuss together how to resolve this pressing issue in the interests of consumers.

I would also like to thank Senators Klobuchar and Rockefeller for introducing an important piece of legislation addressing ETFs - the Cell Phone Consumer Empowerment Act - which I think serves as an important basis for this discussion. This bill, along with the legislation introduced by Senator Mark Pryor regarding a national regulatory framework, and the draft sponsored by Chairman Ed Markey addressing wireless consumer protection, are equally important to this debate.

We certainly appreciate Senator Klobuchar taking time out from her hectic schedule to join us. I also want to thank our distinguished panelists, representing all sides of this debate, from class-action plaintiffs and counsel, consumer advocates and state representatives to various sectors of industry. I look forward to hearing from each of you and I greatly appreciate that many of you have traveled here, even on short notice, in order to better inform our decision-making. I also extend a warm welcome to our two consumer panelists, Harold Schroer and Molly White. Although there are only two of you here today, your voices are key to this debate, as you represent thousands of our fellow citizens whose interest should be foremost in our minds.

At the Commission, we receive hundreds of complaints each year about early termination fees, particularly for cell phones. In recent years, we've also seen an increase in the number of ETFs in contracts for other telecom services, including video and fixed-line broadband. In fact, the 2008 Annual Survey of Cell-Phone Service conducted by the Consumer Reports National Research Center found cellular phone service generally "among the lower-rated services" reviewed, and it has been this way for the past six years.¹ That survey revealed that mandatory contract extensions were one of the top two complaints consumers had about their cellular phone service, along with

¹ *Best Cell Phone Deals*, CONSUMER REP., Jan. 2008, available at <http://www.consumerreports.org/cro/electronics-computers/phones-mobile-devices/phones/cell-phone-service-providers/cell-phone-service-1-08/overview/cell-service-ov.htm>.

the high costs for service.² While I am sure the views espoused by the panelists are quite disparate, I think we have to agree that in general, it does appear that consumers are unhappy about early termination fees on wireless cellular service contracts, even as they take advantage of subsidized phones in large numbers.

I have been pleased, however, to see the major wireless carriers and CTIA responding to this public dissatisfaction with ETFs by moving towards pro-rating these fees and providing some additional flexibility to cellular consumers. This certainly moves the ball forward in providing additional benefits to consumers. I expect there may be more we can do to further this discussion to ensure baseline protections for all consumers.

I also expect our panels will provide additional clarity on some of the core underlying issues regarding ETFs for which there is ongoing dispute by interested parties. We continue to hear from wireless carriers that the inclusion of early termination fees is a necessary rate charged for recouping the subsidy on cell phones as sold on a discount. On the other hand, consumer groups argue that these fees unfairly lock customers into services from which they might otherwise switch, thereby distorting the market. I am pleased that we have included panelists here today that can speak to the cost analysis of these subsidy arguments as well as to the effect of ETFs on consumers' behavior. Ultimately, my hope is that this hearing will be very useful in giving us greater insight on the impact of early termination fees and what steps may be necessary in addressing both the public's and the states' concerns.

Of course, this hearing comes to us at a critical time, to say the least - a time when class-action lawsuits filed several years ago against cell phone providers are advancing through state courts and have really shaken up the debate. With jury deliberations ongoing in at least one of these cases, and other class action lawsuits about to begin in the coming weeks, we are just now looking at the question of whether the Commission can and should preempt state efforts in this area, or whether early termination fees are terms and conditions that must be left to the states. I know the expert panelists here today will be elaborating on this important question of federal preemption and I look forward to hearing from you on this issue.

If a majority of the Commission determines, as requested by CTIA in its petition, that ETFs are "rates charged," and concludes that it is appropriate to preempt the states in this arena, it will be even more critical that we determine the ramifications and practical implications of this action. What are the appropriate measures -- besides partially pro-rating these fees -

² *See id.*

- that we should take to protect consumers? What is the cost benefit analysis for the public? This is the bottom line since we must always be guided by what's best for consumers. After all, the Commission is an expert agency dedicated to advancing the public's interest. I hope that all panelists will explain why their view of early termination fees best meets the Commission's public interest mandate.

I again thank you for your time today and look forward to hearing from you.